

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PAUL J. BERESWILL,

Plaintiff,

- against -

SPORTS MEDIA 101 INC.,

Defendant.

Docket No. 17-cv-02304

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Paul J. Bereswill (“Bereswill” or “Plaintiff”), by and through his undersigned counsel, as and for his Complaint against Defendant Sports Media 101 Inc. (“SM 101” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of New York Rangers hockey player Jesper Fast owned and registered by Bereswill, a New York-based photojournalist. Accordingly, Bereswill seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or is doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Bereswill is a professional photojournalist in the business of licensing his photographs to online, print, and television media outlets for a fee, having a usual place of business at 622 South Main Street, Freeport, New York 11520. Bereswill's photographs have appeared in many publications around the United States.

6. Upon information and belief, SM 101 is a corporation duly organized and existing under the laws of the State of New York, with a place of business at 235 West 23rd Street, New York, New York 10011. At all times material hereto, SM 101 has owned and operated a website at the following URL: www.sportsmedia101.com (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. On February 5, 2017, Bereswill photographed New York Rangers hockey player Jesper Fast during a hockey game (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Bereswill then licensed the Photograph to the New York Post (the "Post"). On February 5, 2017, the Post ran an article that featured the Photograph on its web edition entitled, *Rangers snap out of home funk with third-period dramatics*. See <http://nypost.com/2017/02/05/rangers-snap-out-of-home-funk-with-third-period-dramatics/>. Bereswill's name was featured in a gutter credit identifying him as the photographer of the Photograph. A true and correct copy of the Photograph in the article is attached hereto as Exhibit B.

9. Bereswill is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

10. The Photograph was registered with the U.S. Copyright Office and was given pending Copyright Registration Number 1-4487737707. See Exhibit C.

B. Defendant's Infringing Activities

11. Upon information and belief, on or about February 5, 2017, SM 101 ran an article on the Website entitled *Rangers snap out of home funk with third-period dramatics*. See <http://www.sportsmedia101.com/newyorkrangers/2017/02/05/rangers-snap-out-of-home-funk-with-third-period-dramatics/>. The article prominently featured the Photograph. A true and correct copy of the article is attached hereto as Exhibit D.

12. SM 101 did not license the Photograph from Plaintiff for its article, nor did SM 101 have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST SM 101)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. SM 101 infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on its Website. SM 101 is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the aforementioned acts of infringement by SM 101 have been willful, intentional, and purposeful, in disregard of and with indifference to Plaintiff's rights.

17. As a result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to recover his damages and Defendant's profits pursuant to 17 U.S.C. § 504(b).

18. Defendant's conduct, described above, is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant SM 101 be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: March 30, 2017
Valley Stream, New York

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